

**RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT AND
AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE**

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Serial Number: 10/074,896

Dkt: 1828.003US1

Filing Date: February 13, 2002

Title: POULTRY FEED SUPPLEMENT FOR INCREASING POULTRY BREAST MEAT WEIGHT

REMARKS

This responds to the Notice of Non-Compliant Amendment mailed on October 13, 2005 and the Office Action mailed on May 27, 2005.

Claims 1, 29, and 30 are amended, no claims are newly canceled, and no claims are added; as a result, claims 1-14, 17, 29, and 30 are now pending in this application.

Present claims 1 and 29 recite administering a supplement comprising powdered animal plasma. Support is present throughout the specification, for example at page 5, last paragraph. Present claim 30 reflects a corrected typographical error and the addition of a period. The present specification at page 8, lines 24 and 25 is now consistent with claims 5 and 6. Original claims 5 and 6 provide support for addition of the phrase *up to*. An apostrophe was added to make possessive the word *animals*. The latter corrects an obvious typographical error. No new subject matter has been added.

Claim Objections

Claims 5 and 6 were objected for reciting the phrases “up to about 0.05-3.0%” and up to about 0.1-1.5%” because the specification allegedly discloses concentrations within the range of 0.05 to 3.0%, but does not teach concentrations less than 0.05% that appear to be encompassed by the claims. The Examiner has suggested amending the claims to read “from about 0.05%...” or “from about 0.1%” Applicants have inserted the phrase *up to* at page 8 of the specification. The claims and specification are now consistent. Withdrawal of this objection is respectfully requested.

Claim 30 was objected to because the claim reads “and decrease the yield” where it should read “and decreases the yield”. This objection was to a typographical error, which has been corrected. Withdrawal of this objection is respectfully requested.

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Double Patenting Rejection

Claims 1-4, 7-9, 11-14, 17, 29, and 30 were rejected under the judicially created doctrine of double patenting over claims 1-4 and 6-8 of U.S. Patent No. 6,004,576. This rejection is respectfully traversed.

The Examiner on the one hand asserted that “the conflicting claims are not identical” and on the other hand asserted that “the claims of [the] ‘576 [patent] anticipate the instant claims.” Final Office Action at page 2. The Examiner further asserted that: “both sets of claims encompass a method of increasing weight in poultry using an animal supplement comprising animal plasma,” “[t]he difference between ‘576 and the instant invention is only the outcome,” and “[d]iscovery of [a] new property or use of [a] previously known composition ... cannot impart patentability to claims to [a] known composition. *In re Spada*, 911, F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).” Final office Action at pages 2-3.

Initially, it must be pointed out that Applicants’ original claim 8 recites a particle size of at least 50 microns whereas claim 1 of U.S. Patent No. 6,004,576 recites a particle size greater than about 100 microns. Therefore, at least with respect to original claim 8, the Examiner is mistaken that “[t]he difference between ‘576 and the instant invention is only the outcome.” Furthermore, only methods of use are claimed herein and in U.S. Patent No. 6,004,576. Therefore, decisional law germane to compositions is completely inapposite.

In addition, the present claims recite a supplement comprising powdered animal plasma. In contrast, claim 1 of U.S. Patent No. 6,004,576 recites granulated animal plasma wherein the bulk density of the granulated particles is about 50 pounds per cubic foot. As Applicants have disclosed at page 9 of the specification, Applicants’ method surprisingly increases the average yield of breast meat at the expense of leg and thigh meat yield in addition to increasing the overall weight of the poultry. Accordingly, the present claims are neither anticipated by nor obvious over the claims of U.S. Patent No. 6,004,576. Withdrawal of this rejection is respectfully requested.

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§102 Rejection of the Claims

Claims 1-4, 7-14, 17, 29, and 30 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,004,576. This rejection is respectfully traversed. The Examiner asserted that U.S. Patent No. 6,004,576 uses “the same plasma product on the same animal species,” and that Applicants’ unexpected result is inherent. Final Office Action at page 5.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989). To constitute anticipation, the claimed subject matter must be identically disclosed in the prior art. *In re Arkley*, 172 U.S.P.Q. 524 at 526 (C.C.P.A. 1972). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the art. *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 101 (Fed. Cir. 1991). To overcome the defense of anticipation, “it is only necessary for the patentee to show some tangible difference between the invention and the prior art.” *Del Mar Engineering Lab v. Physio-Tronics, Inc.*, 642 F.2d 1167, 1172, (9th Cir. 1981).

Moreover, an anticipation rejection that is based on inherency must be supported by factual and technical grounds establishing that the inherent feature must flow as a necessary conclusion, not simply a possible conclusion, from the teaching of the cited art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int. 1990); *In re Oelrich*, 666 F.2d 578, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981).

The present claims recite a supplement comprising powdered animal plasma; in contrast, U.S. Patent No. 6,004,576 discloses granulated animal plasma wherein the bulk density of the granulated particles is about 50 pounds per cubic foot. Granulation of the plasma increases the bulk density of plasma powder, which has a bulk density of about 32 pounds per cubic foot. See column 4, line 66 to column 5, line 5. Accordingly, because every element of the present claims

is not identically disclosed in U.S. Patent No. 6,004,576, there can be no anticipation.

Withdrawal of this rejection is respectfully requested.

§103 Rejection of the Claims

Claims 1-7, 10, 11, 13, 14, 17, 29, and 30 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 6,086,878 to Adelsteinsson *et al.* This rejection is respectfully traversed. The Examiner apparently considers that the method steps of Applicants' claims are the same as those disclosed in Adelsteinsson *et al.*, and that Adelsteinsson *et al.* discloses administration of plasma in place of eggs or milk. Final Office Action at page 7.

However, Adelsteinsson *et al.* does not disclose administration of powdered animal plasma. Adelsteinsson *et al.* discloses administration of effective amounts of antibodies obtained from various sources, which include plasma. See column 7, lines 40-42. The antibodies must be produced and then may be isolated and purified from the various sources. See column 8, line 56 to column 9, line 13. Larger quantities or supranormal levels of antibodies are generated by hyperimmunizing the target animal with e.g., booster administrations of sufficiently high dosages of gastrointestinal neuro-modulator. See column 7, lines 52-63. Purified antibodies may be administered as powders; see column 9, line 66 to column 10, line 2. The only other powders disclosed by Adelsteinsson *et al.* are egg yolk powders with enhanced antibody levels.

In contrast, Applicants' invention is drawn to administration of all the proteins and peptides that are contained in powdered animal plasma, and is not drawn either to administration of effective amounts of isolated and purified antibodies or to administration of effective amounts of plasma containing supranormal levels of antibodies generated by hyperimmunizing the target animal. Applicants' plasma powder includes approximately 15-30% IgG. See specification at page 7, line 13. As such, Applicants' method is *not* the same as the method of Adelsteinsson *et al.* Other than her conclusory statement that the method steps of Applicants' claims are the same as those disclosed in Adelsteinsson *et al.*, the Examiner has not set forth a *prima facie* case of obviousness. Withdrawal of this rejection is respectfully requested.

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§102/103 Rejection of the Claims

Claims 1 and 10 were rejected under 35 U.S.C. § 102(b) as allegedly being clearly anticipated by, or in the alternative, under 35 U.S.C. 103(a) as allegedly obvious over U.S. Patent No. 6,004,576 to Weaver *et al.* This rejection is respectfully traversed.

The Examiner asserted that the recitation of transgenic animal in claim 10 “does not provide a patentable distinction between claims 1 and 10.” Office Action of September 1, 2004 at page 12. Alternatively, the Examiner considered the use of a transgenic animal to be obvious over the method of Weaver *et al.* using a non-transgenic animal.

This rejection is predicated on the Examiner’s assertion in the rejection under § 102(b), *supra*, that U.S. Patent No. 6,004,576 uses “the same plasma product on the same animal species,” and that Applicants’ unexpected result is inherent. Final Office Action at page 5. As Applicants have pointed out above, the present claims recite a supplement comprising powdered animal plasma; in contrast, U.S. Patent No. 6,004,576 discloses granulated animal plasma wherein the bulk density of the granulated particles is about 50 pounds per cubic foot. Therefore, U.S. Patent No. 6,004,576 does not disclose the same plasma product. Accordingly, there is no anticipation or *prima facie* obviousness. Withdrawal of this rejection is respectfully requested.

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CONCLUSION

Applicant respectfully submits that the Examiner withdraw the non-compliant status and examine the response as appropriate.

The Examiner is invited to telephone Applicant's attorney at (612) 349-9580 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

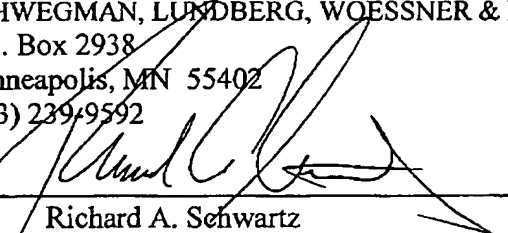
JOY CAMPBELL ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(703) 239-9592

Date 28th October, 2005

By


Richard A. Schwartz
Reg. No. 48,105

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28th day of October, 2005.

PATRICIA A. HULTMAN

Name


Signature